



**Ouko v Republic (Criminal Revision 34 of 2024)
[2024] KEHC 3996 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3996 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 34 OF 2024**

DR KAVEDZA, J

APRIL 9, 2024

BETWEEN

BONFAS ODHEK OUKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with a total of 10 counts of offences. Counts I, III, and IV are each of obtaining money by false pretenses contrary to section 313 of the *Penal Code*; Count II, making a false document contrary to section 347 (a) as read with section 357 of the *Penal Code*; Counts V, VI, VII,VIII and IX are each of being in possession of documents resembling identity cards contrary to section 14(1)(i)(iii) of the *Registration of Persons Act*, 2015; and finally Count X was of unlawfully being in possession of identity cards belonging to another person contrary to section 14(1)(f) of the *Registration of Persons Act*.
2. He was convicted and sentenced as follows: On counts I, a fine of Kshs 20,000 in default to serve 6 months imprisonment. On count II, a fine of Kshs. 50,000 in default to serve 12 months imprisonment. In counts V, a fine of Kshs. 100,000, in default to serve 12 months imprisonment. In counts VI, VIII and IX a fine of Kshs. 100,000 on each count in default to serve 1-year imprisonment each and in count X a fine of Kshs. 10,000 in default to serve 2 months imprisonment.
3. He has now filed an application seeking revision of sentence. The arguments raised are that the trial court failed to consider the time spent in reman custody during the computation of sentence under the provision of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya.
4. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody.



5. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider the time already spent in custody. The duty to take in account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms was acknowledged by the Court of Appeal in *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR and *Bethwel Wilson Kibor v Republic* [2009] eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others* [2021] eKLR.
6. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
7. In this case, the applicant was sentenced to the payment of fines on the respective charges he was convicted of. The prison sentences imposed are default sentences which accumulate to 3 years and 2 months. In his application, the applicant misled the court by indicating that he has been in remand custody for over 2 years. However, from the court record, the applicant was arrested on 25th May 2021 and after taking plea, he was released on a cash bail on 18th June 2021. He only spent 25 days in remand custody and not 2 years and 8 months as alleged. In addition, the trial court indicated in its sentencing ruling that the period spent in remand custody was considered before imposing the sentence.
8. Consequently, the application is frivolous and lacks merit and is hereby dismissed.
Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL 2024

D. KAVEDZA

JUDGE

